UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

08 CR 76

versus

United States Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

JOSEPH AGATE, ET AL,

DEFENDANTS.

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April 9th, 2008
11:30 a. m.

TRANSCRIPT OF CONFERENCE

Before: HON. JACK B. WEINSTEIN,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES

REPRESENTING THE GOVERNMENT:

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Eastern District of New York
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Brooklyn, NY 11201-1820
BY: Joseph Lipton, AUSA
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REPRESENTING THE DEFENDANTS:

Margaret Shalley, Esq. for Vincent Pacelli

Elizabeth Macedonio, Esq. for John D'Amico

Joseph Ryan, Esq. for Domenico Cefalu

Amit Sondhi, Esq. for Domenico Cefalu

REPRESENTING THE DEFENDANTS (CONTINUED):

Charles Carnesi, Esq. for Anthony Licata

Seth Ginsberg, Esq. for William Scotto (appearance waived)

Dominic Amorosa, Esq. for Gino Cracolicci

Vincent Martinelli, Esq. for Anthony O'Donnell

Eric Franz, Esq. for Augustus Sclafani

Joseph DiBenedetto, Esq. for Joseph Scopo

Alan J. Futerfas, Esq. for Louis Filipelli

Ron Rubinstein, Esq. for Arthur Zagari

Jim Froccaro, Esq. for Robert Epifenia

Joseph Benfante, Esq. for Joseph Chirico

Daniel Tanon, Esq. for Thomas Cacciopoli

William DiCenzo, Esq. for Arthur Zagari

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Proceedings recorded by mechanical stenography, transcription by CAT.

THE COURT: Good morning, everyone. Sit down, please.

THE CLERK: Criminal cause for status conference, USA versus Jerome Brancato, et al.

THE COURT: I think the primary purpose this morning is to divide these cases into reasonable groups for trial, and also inquire about representation, and whether it should be permitted in a number of cases.

I should begin by asking the government whether it would be prepared to try a number of these groups together, simultaneously, so that one judge could try A and one judge B at the same time. Do you have enough lawyer power to do that?

MR. LIPTON: I don't know, Judge. The issue might be more that we might not have the witness power, because one or more witnesses are going to be the primary witnesses in a number of these groups, and it might be sort of impossible to do it at the same time or close, even, in time.

THE COURT: Well, think about it. The witness problem doesn't seem to be insuperable. You can work with your colleagues with respect to the point at which they're called, and adjournments and continuances can be granted. I'm not pressing the point at this morning's hearing. I'm just raising the problem. Obviously, we don't want to keep repeating trials now. You have eight or nine different trials. Each one of them is substantial -- which would mean that even if they are tried one immediately after the other, supposedly need a week or so between trials or more to regroup and rest -- we're talking about almost a year of continuous trial or maybe more than a year of continuous trials.

Anyway, you think about it. We have no lack of judge power here. We can try as many as you want at the same time. We have lots of judges. We can try them all at the same time. We're not particularly busy, so anytime you want to come before us with a trial, we're ready. Anyway, think about it.

Now, we're going to conduct proceedings based upon the submissions of the government, because I think that even though some of their submissions may be deemed objectionable by the defendants, they have obviously spent a lot of time and thought on how these cases should be divided up. It's not an easy thing.

The contentions on the MDC problem of listening to consensual recordings, we'll take up at 3:30. Only one defendant has made a motion on the issue. So if we're going to have other defendants who are going to argue it, you'd better take it up and let the marshal know immediately, or the other defendants won't be here.

MS. MACEDONIO: Your Honor, Elizabeth Macedonio on behalf of Mr. D'Amico. We have a similar problem with respect to access to audio tapes, so we would like to be present for that, as well.

THE COURT: Well, if you want your client present, you'd better take it up with the government and the marshals, so they'll have him here.

MS. MACEDONIO: I have already spoken to Mr. Lipton about it, and I will advise the marshals. Thank you, Judge.

THE COURT: Okay. There's an application to have all 62 defendants meet in this courthouse. I'm not going to grant that. It's impossible to provide security.

Those who are out on bail can meet anytime they want. If they want to meet in the courthouse, we can arrange it, but you can meet wherever you want, as long as you don't violate the terms of your bail.

Now, part of the problem we have to deal with this morning is a number of attorneys represent a number of defendants, and they currently or previously represented associates of the Gambino organized crime family in other cases.

The government has advised in a communication, indicated those possible conflicts it knew about. If defense counsel are aware of other possible conflicts, they should bring it to the attention of the government and the Court promptly. I'm not going to try a case and then have revealed to me a possible conflict under 2255 or some other basis.

So I consider that every defense counsel has an obligation, if he or she is aware of another possible conflict because of the firm's representation or his or her representation of a possible witness or another defendant or a prior defendant that may be involved in some way, they have a professional and ethical obligation to bring it up. I don't want to any cover-ups here.

All right. Then let's move to Group A. Group A trial is set for June 6th. Let me call the roll of this first group, and see if everybody is here. This is A, B and C.

Cefalu?

MR. RYAN: Yes, Judge. Joseph Ryan for Dominic Cefalu.

THE COURT: He's waived his appearance, correct?

MR. RYAN: He did not waive his appearance. There was an error made, but we'll waive it to expedite the proceeding today only.

THE COURT: All right. I want a letter from him on that.

MR. RYAN: Yes. And we'll have him here, I hope, at 3:30, because we want to be present for the tape issue.

THE COURT: Okay. We'll try.

And you filed a letter last night asking he be produced, but it didn't come in time, and the marshals -- I'm not saying that critically, of course.

D'Amico?

MS. MACEDONIO: Elizabeth Macedonio for Mr. D'Amico.

THE COURT: Pardon me?

MS. MACEDONIO: Elizabeth Macedonio for Mr. D'Amico.

Your Honor, are you just calling the roll, or do you want to hear counsel's position with respect to the trial date?

THE COURT: I'm calling the roll.

MS. MACEDONIO: Thank you, Judge.

THE COURT: Filippelli?

MR. FUTERFAS: Good morning, Your Honor. Alan Futerfas for Louis Filipelli, who is present.

THE COURT: He is in custody.

Pacelli?

MS. SHALLEY: Good morning, Your Honor. Margaret Shalley on behalf of Vincent Pacelli, who is present, as well.

THE COURT: He is in custody.

Sclafani?

MR. FRANZ: Good morning, Your Honor. Eric Franz for Mr. Sclafani. He is seated in the back row.

THE COURT: Where? He's in the back row?

MR. FRANZ: Yes, standing up with the blazer on and the yellow shirt.

THE COURT: All right. Well, is that where you want him?

MR. FRANZ: Your Honor, it's fine.

THE COURT: Brancato?

MR. KING: Brian King from Tacopina and Siegel. Mr. Brancato is ill today. We left a message.

THE COURT: I can't hear you.

MR. KING: Mr. Brancato is ill today. My office had left a message for the courtroom deputy. I ask that his appearance be waived today.

THE COURT: You waive his presence?

MR. KING: Yes, Your Honor.

THE COURT: I want a letter from you.

MR. KING: Yes, Your Honor.

THE COURT: Chirico?

MR. BENFANTE: Joseph Benfante, Your Honor. Good morning, Your Honor. And Mr. Chirico is standing there in the back row.

THE COURT: Are you satisfied with where he is?

MR. BENFANTE: Yes, Judge.

THE COURT: O'Donnell?

MR. MARTINELLI: Yes, Your Honor. Vincent Martinelli for Mr. O'Donnell, who is standing in the back, and I am satisfied.

THE COURT: Zagari?

MR. RUBINSTEIN: Good morning, Your Honor. Ron Rubinstein for the defendant, Zagari, who is standing in the second to last row, and he's satisfied with his position.

THE COURT: Cacciopoli?

MR. TANON: Daniel Tanon for Thomas Cacciopoli. And I guess he has no choice but to be satisfied with his position.

THE COURT: Where are you?

DEFENDANT CACCIOPOLI: Right here (indicating in the jury box).

THE COURT: Thank you.

DEFENDANT CACCIOPOLI: You're welcome.

THE COURT: Cracolici?

MR. AMOROSA: Yes, Judge. Dominic Amorosa for Mr. Cracolici, who is in court.

THE COURT: Are you satisfied with his position?

MR. AMOROSA: I am. Thanks.

THE COURT: Epifania?

MR. FROCCARO: Judge, James Froccaro for Mr. Epifania. He's in the court standing right over there, and I'm satisfied with his position.

THE COURT: Thank you.

Licata?

MR. CARNESI: Good morning, Your Honor. Charles Carnesi, appearing for Mr. Licata. Mr. Licata is present in court, as well.

THE COURT: Are you satisfied with your position in the courtroom, Mr. Licata?

DEFENDANT LICATA: Yes.

THE COURT: Yes? Good.

Mr. Scopo?

MR. DIBENEDETTO: Good morning, Judge. Joseph

DiBenedetto for Mr. Scopo, who is seated in the second row.

THE COURT: Are you happy with your position in the courtroom, Mr. Scopo?

DEFENDANT SCOPO: Yes.

THE COURT: Mr. Scotto?

MR. GINSBERG: Good morning, Your Honor. Seth Ginsberg for William Scotto. His appearance has been waived today.

THE COURT: Did we get a letter on that?

MR. GINSBERG: Yes.

THE COURT: I think we did, yes.

Now, is there anybody I left off who is supposed to be here for this first meeting? No? Okay. Now, let's take them up one at a time.

Now, as to Cefalu, he has been previously placed in Group B, and now he is placed in Group A.

MR. RYAN: That's fine with us.

THE COURT: Okay. All right. So we have a satisfied customer.

MR. RYAN: Thank you.

THE COURT: D'Amico?

MS. MACEDONIO: Good morning, Your Honor.

I do have a conflict with the current trial date. I have a firm date in front of Judge Townes scheduled for June 16.

THE COURT: You have a what?

MS. MACEDONIO: A firm trial date in front of Judge Townes scheduled for the 16th.

THE COURT: What kind of case?

MS. MACEDONIO: It's also a RICO case, Your Honor. The defendants have been incarcerated for approximately 18 months at this point.

THE COURT: How many people?

MS. MACEDONIO: Four.

THE COURT: All right. Apply for an adjournment. I want to go forward with this case.

MS. MACEDONIO: Your Honor, I'm also new on the case. I just filed a notice of appearance. I haven't had the opportunity the review any of the discovery. My client is incarcerated in Queens. There are separation orders in place. He hasn't had the opportunity to review the discovery. And we are requesting a later trial date.

THE COURT: You're requesting a what?

MS. MACEDONIO: A later date.

THE COURT: You're denied a later date. We have to move forward.

MS. MACEDONIO: Your Honor, given the Court's position, I trust that I can confer with June as far as scheduling with Judge Townes?

THE COURT: Take it up with Judge Townes and with the

U.S. Attorney, who has some influence on dates.

MS. MACEDONIO: I will report back to Your Honor.

THE COURT: And explain to the Judge that this is a 62 defendant case, and I can't deal with adjournments, in view of the fact that I have practically the whole cream of the New York bar in this case. If I have to deal with all of their other engagements, I'll never be able to finish the case. So I'm not going to look kindly on any other engagements, particularly in the case of a recent engagement.

So you'll have to either get out of the case or make other arrangements. Your client is going forward on this date.

MS. MACEDONIO: Thank you, Judge.

THE COURT: Filippelli?

MR. FUTERFAS: Yes, Your Honor. Alan Futerfas for Mr. Filippelli.

We had communicated, Your Honor, our objection to being tried alongside RICO defendants. In Group A, the government has postured the non-RICO defendants along with RICO defendants. We stated our objection to Your Honor to that on multiple occasions by letter.

Also, Your Honor, I do share in Ms. Macedonio's concerns. I had written to Your Honor last night, thinking that at the absolute earliest, I would be prepared to go to trial July 1.

There are literally hundreds of consensual conversations to be reviewed. A lawyer listening to every tape, if a lawyer was to listen to every tape, it would take months and months and months.

THE COURT: Excuse me. Are you retained?

MR. FUTERFAS: Yes, I am, Your Honor.

THE COURT: Well, then hire additional counsel and paraprofessionals to assist you.

MR. FUTERFAS: Actually, I am, and one is starting May 1st, but it's still a question of --

THE COURT: Well, May 1st? This is only April 9th. What's happening between?

MR. FUTERFAS: We have received the tapes. We have not only received the tapes, but we corresponded with the government and got a list from the government of tapes that we thought and they thought might have been most productive for us to listen to, but there are practical realities.

And the practical reality is, you have got a principal witness against our client who made hundreds of recordings, many of which may or may not be relevant, and even if the government considers them relevant, there may be others that we consider relevant that the government is not playing. I won't even find those tapes. I won't even be able to the find the existence of those tapes in the time by June 6. All I asked for was July 1, thinking that the extra time between now and July 1 would make it marginally able, working very diligently to be prepared for the trial. So that's my application, Your Honor.

THE COURT: Well, it's denied.

Can you all hear me? I've had a little trouble.

MR. FUTERFAS: Your Honor, the other concern we raised, obviously, is being on trial with individuals charged with RICO, when Mr. Filippelli -- and there are few other defendants -- were not charged with RICO being alongside those in a joint trial. We have cited cases to Your Honor, obviously, and have serious concerns about being in that situation.

The government's got to prove an enterprise. They have a number of witnesses that we think they might call as enterprise witnesses that will have nothing to say and nothing to do with the charges against Mr. Filippelli, and the possibility of prejudice is particularly acute. So we made that application, Your Honor, and we maintain it today.

THE COURT: No. I understand it. It's a substantial point.

What's the government's response?

MR. LIPTON: Your Honor, we recognize --

THE COURT: You needn't stand, unless you want to.

MR. LIPTON: We recognize that this case involves RICO and non-RICO defendants. The particular defendant that was Mr. Futerfas is representing is involved in the same exact extortion, albeit he's charged in a substantive count and not the RICO. But given the nature of almost all the extortions that are charged in this case, they are sort of driven by the fact that the Gambino family controls the industry.

So necessarily, all of the extortions, even if it's not a RICO count, it's going to have to come out as to how these people controlled the industry, and how the defendants were able to extort the individuals who we say are the victims in the case. And it's necessarily going to come out that they have a position in the family. And enterprise proof, if it's not specifically to that individual, it's still going to come out as to who they are.

Your Honor certainly can give an appropriate instruction, so that the jury knows that they are not able to consider certain evidence if it's a non-RICO defendant, and we think Your Honor will be able to get the jury to follow those instructions.

MR. FUTERFAS: Your Honor, if I could briefly respond.

There are 23 RICO defendants. That's enough for, pursuant to Your Honor's prior order in which Your Honor didn't want more than seven defendants to go to trial at once, that's enough for three consecutive RICO trials. There are 39 non-RICO defendants.

To create prejudice to say that we're going to take a few of the non-RICO defendants and try them with some of the racketeering or the RICO defendants, most respectfully does not seem to make sense, when we have such large groups to choose from, to eliminate prejudice.

With respect to the government's suggestion that the trials would be essentially coterminous in terms of the evidence, it really is not the case. Your Honor has sat through so many RICO racketeering trials. I've done a few, myself. It's not the case. They call witness after witness who testifies extensively about alleged organized crime families. They call experts.

Meanwhile, I have got a client who's charged with essentially a single count, a substantive count, a conspiracy count, who is going to be sitting through weeks of trial, weeks of tapes that have nothing to do with him, when there are 39 other non-RICO defendants that he could be on trial with.

THE COURT: Well, I understand the problem, and it's a forcible argument that you make. I'll do the best I can to protect your client. Necessarily, when people get associated with gangsters -- which is the allegation -- they run into serious problems.

Is it your contention that this defendant is a member or associated?

MR. LIPTON: It is alleged, yes, Judge, that he's a captain in the Gambino family.

THE COURT: Captain?

MR. LIPTON: Yes, Judge.

MR. FUTERFAS: Your Honor, he's not charged in the RICO. There are plenty of racketeering defendants. If the Court wants a trial soon, there are plenty of defendants who are charged in the RICO that can go to trial now. My client can go to trial with some non-RICO defendants at some point.

THE COURT: But he's not.

MR. FUTERFAS: There is no reason he has to go to trial now with racketeering defendants.

THE COURT: Well, I'm not going to separate them. If he's associated with these people outside of court, it's one of the dangers.

I'll do everything I can to protect him, but there has to be some arbitrary divisions. Otherwise, at one of the end of the spectrum, everybody is entitled to a separate trial, and that's obviously impossible.

MR. FUTERFAS: Your Honor, but an individual set of racketeering defendants, six or seven who could go to trial together, are not going to be prejudiced by the introduction of the enterprise proof, because they're all charged with enterprise. So why are we selectively taking certain non-RICO defendants and putting them with RICO defendants?

So my request, and I put it in writing a number of times, group Mr. Filippelli and anyone who shares his objection with other non-RICO defendants, and set them for trial with non-RICO defendants. Your Honor doesn't have to face the issue.

THE COURT: It's just these, Cefalu, D'Amico, Filippelli, Pacelli and Sclafani? Those are the only ones being tried.

MR. LIPTON: That is the first group we propose, Your Honor.

THE COURT: It seems to me everybody has a basis for objecting, but yours is the least appealing. You're getting a prompt trial in a small group. And apparently, there's evidence that your client was substantially involved with this gang -- if it is a gang. I'm not saying it is. It's alleged.

As much as I understand your position, I'm not going to going to separate you.

Now, you're representing which defendant?

MR. FUTERFAS: Louis Filippelli, Your Honor.

THE COURT: Filippelli? Is Bettina Schein out of that case?

MR. FUTERFAS: Your Honor, she was acting of counsel to me for some status conferences, and seeing Mr. Filippelli in jail when I couldn't see him. Subsequent to that, she was retained by another defendant in this case.

THE COURT: So she is not a problem for me because she was a problem, since I have her as representing Todd Polakoff, but that's out now? She is not representing the person who is your client now, Filippelli?

MR. FUTERFAS: I was always counsel for Mr. Filippelli.

THE COURT: Well, it wasn't clear to me. Now it's clear. You're the only representative, and you have no conflict, because you're not representing anyone else, correct?

MR. FUTERFAS: That's correct.

THE COURT: Okay. That simplifies my problem.

Ms. Shalley?

MS. SHALLEY: Margaret Shalley for Vincent Pacelli.

We also filed a motion to sever from the RICO defendants who would be in this count, Cefalu and D'Amico, and we also ask for a later trial just because of the volume of discovery.

THE COURT: You didn't want to be tried with J. Corozzo, correct?

MS. SHALLEY: Well, that was the original group that was proposed by the government. In the new group, the RICO defendants would be Cefalu and D'Amico. For exactly the same reasons as in the motion, the spillover prejudice of being tried with the RICO defendants, and having to prove the enterprise. Well, we suggest --

THE COURT: Reduce the possibility, but I'll hear your suggestion.

MS. SHALLEY: We suggested the group of Filippelli, Pacelli and Sclafani, as a group to go, as opposed to including D'Amico and Cefalu.

THE COURT: Just three?

MS. SHALLEY: Just three.

THE COURT: Denied. I can't do it. That places too much of a burden on the Court. I can't have groups of three. Some of these groups will be reduced by pleas, I assume.

But your motion to be excluded from that group is denied. You'll go forward.

MS. SHALLEY: Okay.

THE COURT: Now, as I call each one and the attorney speaks, if you don't bring to my attention any conflict that I don't raise, I assume you will raise it. So silence is taken by the Court in connection with my previous admonition as indicating there's nothing to bring to the Court's attention or the U.S. Attorney's attention.

Sclafani?

MR. FRANZ: Yes, Your Honor. Eric Franz. There is a conflict issue to be addressed, as well as I have problems with the trial date, as well.

THE COURT: All right. I'll hear you on the trial date. Do you object to being in Group A?

MR. FRANZ: I do, for the reasons articulated by Mr. Futerfas, and also in my letter to the Court, the spillover prejudice to Mr. Sclafani, who is a non-RICO defendant charged with essentially one crime.

I would proffer to the Court that a trial of Mr. Sclafani on his own -- which I'm sure the Court isn't going to grant a solo trial -- would probably be a matter of days, versus the several weeks that would otherwise be in an enterprise-related trial.

With regard to readiness, I have two back-to-back trials scheduled for May, and those dates will not be changed by the judge in New Jersey, on cases that involve hundreds of thousands of documents. They are consumed by my office and will consume my office until those trials are done, which would be sometime in early June.

I have a tentative trial date with Judge Wood in the Southern District. Now, that date might be able to get moved, certainly if I explain to the Court your position.

But I cannot under any circumstances be ready for a June 6th trial date. My client is not incarcerated. He's out on bond. We never requested a speedy trial. We never insisted on an immediate trial.

This is a case where it's not just about reviewing the tapes that the government identifies that my client is captured on. It's about reviewing the tapes where he might be referred to. It's about reviewing the tapes for potential impeachment material of the witness that wore the wire for the consensual recordings, plus going through all the other discovery.

I cannot -- my firm cannot be ready for him and quite frankly, even if the Court were to rule that he would be ready by June 6, I don't know that he has the resources to hire a team of lawyers he would to require to do the proper preparation to be ready for June 6th.

I recognize that government wants to try these cases and the Court does, as well. But to essentially say that we have to be ready for trial 60 days from now when I have other trials, and we just can't do it.

And I respectfully request that he would be given a date in the future. There are certainly lots of other defendants that he can be grouped with -- non-RICO defendants he can be grouped with.

I would respectfully request that the Court consider that we can be grouped up with Mr. Filippelli -- although I don't have consent from his counsel at this point and other non-RICO defendants, to try this case in a much more fluid fashion.

It might be a little bit onerous for the government to recall a witness, but it certainly would overcome the prejudice to try to eliminate the prejudice that my client would suffer in the process of sitting in an enterprise-related trial. I can't be ready for trial on June 6. I made that point clear.

As far as one other issue, there is a conflict issue which the government raised in the letter, and that is that I represented Mr. Scars -- I mean Mr. DiLeonardo, Michael DiLeonardo in trials several years ago, and he's going to be a witness regarding enterprise proof. I think the only evidence that he would be able to offer, according to the government about Mr. Sclafani, is that he knows him and he may or may not identify him as somebody who is alleged to be made member of organized crime.

Other than that, Mr. DiLeonardo became a cooperating witness in 2001. The crime that my client is charged with is charged several years later. So there is no real relevant testimony from Mr. DiLeonardo regarding Mr. Sclafani in that regard.

But should this Court rule that Mr. DiLeonardo could testify at a trial concerning Mr. Sclafani, Mr. Sclafani is prepared to try to engage another lawyer for the purpose -- the sole purpose of cross-examining Mr. DiLeonardo, which, as the Court may or may not be aware, he's testified in numerous other trials. And the task of -- that task alone of preparing to cross-examine Mr. DiLeonardo would be monumental. I'm sure that a lawyer that was engaged today would be prepared for June 6th for that sole task, but the remainder of the case, we wouldn't be ready, and I'd ask for a trial date in the future, possibly September.

THE COURT: What's the view of the government?

MR. LIPTON: Judge, we're not unsympathetic --

THE COURT: Keep your voice up, so everybody can hear you.

MR. LIPTON: The government is not unsympathetic to counsels' -- the burden of counsel on other cases -- obviously, the government has other cases -- we have tried as best we can without being arbitrary to put the groupings together, so that it could minimize redundancies and minimize overlap, and minimize having the same exact trial over and over again.

As best as we can see it, anchoring off those defendants that did want a speedy trial, so that they could have those rights heard, we fashioned the first trial group so that we would have just those people who are in the counts with Mr. Cefalu, who wanted a speedy trial, and we did that in as limited a fashion as we could, and included Mr. Franz's client, Mr. Sclafani, because he's in the same exact count and basically, if we went to trial without him, you're going to have the same exact trial as to Mr. Sclafani, based on the same witness, the same documents, and it's goes going to be virtually the same thing.

The government would be ready for a June trial, if that's what Your Honor wants. I understand counsel now -- this is the third who has had an issue with the timing -- but in the government's perspective, this is a cohesive trial group that will be the most efficient for the government, for the Court, for defense counsel, so that there's not an enormous amount of duplication.

What we're trying to do is keep the trials down, that it's not going to be months on end and things that Your Honor is going to be hearing over and over again. It's going to be a confined group that would have the same counts, would have the same evidence and the same witnesses.

That's what we tried to do, and given that Mr. Cefalu wanted a speedy trial and Your Honor wanted a June trial date, that's what our rational was.

THE COURT: Well, what about the cross-examination of the prior client?

MR. LIPTON: And what we have done for that is given Your Honor's ruling on other cases, we have tried to talk with Mr. Franz, so that we could give a fact to his clients sixth amendment right to have the attorney that he wishes or at the same time, safeguarding the interest of the government and the witness who is going to be testifying at this trial -- and it's not just enterprise evidence. It actually goes to the various extortions that are charged in the case.

It's the government's perspective that by allowing -- by having another attorney who did not represent Mr. DiLeonardo to cross-examine him, and also getting the agreement of Mr. Franz not to address his former client's credibility, that that would safeguard the interest of Mr. DiLeonardo.

And he is somewhat of a unique position, because as

Your Honor knows, he's testified at a number of other trials. So most of the issues that related to the attorney/client information from Mr. Franz to Mr. DiLeonardo has been the subject of cross-examination, and it as been out there.

So with those considerations, Your Honor, we have tried to fashion a resolution by bringing it to Your Honor's attention, so that if Your Honor thinks it's appropriate, you can get the appropriate waivers from Mr. Sclafani. If he cannot, then the government's position would be that, unfortunately, it does raise a conflict that would require disqualification.

THE COURT: Well, I understand the defense position is that you'll have somebody else cross-examine him?

MR. FRANZ: Yes. That's fine, Judge.

THE COURT: All right. I think -- where's Mr. Sclafani?

You have heard this and discussed this matter with your attorney, have you, sir?

DEFENDANT SCLAFANI: Yes.

THE COURT: And are you agreeable to this?

DEFENDANT SCLAFANI: Yes.

THE COURT: You understand you're entitled to an attorney who has no conflict at all. And that the fact that your attorney has represented what may be a major witness against him, may inhibit to some degree the effectiveness of his cross-examination. Has he explained all of that to you?

DEFENDANT SCLAFANI: Yes.

THE COURT: And you're agreeable?

DEFENDANT SCLAFANI: Yes.

THE COURT: Do you want time to consult another lawyer about this?

DEFENDANT SCLAFANI: I discussed it with Mr. Franz.

THE COURT: Well, come up here and --

MR. FRANZ: One moment, Your Honor.

Your Honor, I have spoken to Mr. Sclafani. He wants me to remain as his lawyer, and he understands the conflict issue, and he's willing to waive it.

THE COURT: You understand that, and this is what you want?

DEFENDANT SCLAFANI: Yes, sir.

THE COURT: And you're willing to waive whatever rights you have under the constitution, so that you can get a lawyer of your own choice, is that right?

DEFENDANT SCLAFANI: I want to stay with Mr. Franz.

THE COURT: Is this the lawyer you want --

DEFENDANT SCLAFANI: Yes.

THE COURT: -- despite the possible problem? All right. Give me a letter, please.

MR. FRANZ: Sure.

THE COURT: And it's acceptable to me, unless there's a problem with the government.

MR. LIPTON: Your Honor, just to be clear, the only issue that I think Mr. Franz is agreeable that he will not cross-examine Mr. Scars. We just want to make clear that he will not be able to comment or Mr. Scars -- excuse me -- Mr. DiLeonardo -- I apologize, Your Honor -- Mr. DiLeonardo's credibility at any point during the trial, either during argument --

THE COURT: No. Argument? Of course he can comment on credibility.

MR. LIPTON: Well, it's just that --

THE COURT: He's going to argue the case.

MR. LIPTON: Well, that is, the issue, Your Honor, is his former client and cross-examining is sort of bound up with the fact --

THE COURT: Can you get a waiver from the witness?

MR. LIPTON: He is not willing to waive, Your Honor, from our understanding with his current attorney.

THE COURT: Not willing to waive, even if there's somebody else cross-examining him?

MR. LIPTON: I think that's an acceptable solution, but it's the extra issue of not having his credibility addressed -- argued by his former attorney.

THE COURT: I don't see how I can do that. I don't want to have two people arguing for the defendant.

Explain it to the witness. He ought to be agreeable. I won't say he's putty in your hands, but you certainly have influence on him.

MR. LIPTON: He's testified for the government a number of times, as the Court is aware -- in front of Your Honor, in fact, and defense counsel knows. I certainly can raise it, but obviously, we don't represent him. He takes his, I presume, advice from his attorney.

THE COURT: He's an independent person, but take it up. See if you can resolve the problem. I'm not going to prevent this attorney from arguing credibility, but you have to argue credibility only on what's in evidence, right?

MR. FRANZ: Of course. I would only do it that way, anyhow.

THE COURT: Of course.

MR. FRANZ: The issue remains, Your Honor, I have spoken with my co-counsel, Ms. Shalley, on behalf of her client, Pacelli, Mr. Futerfas, on behalf of Mr. Filippelli, and Ms. Macedonio on behalf of Mr. D'Amico, we all request a September trial date. It's a matter of just getting ready, and I understand that the government -- we have to start somewhere. But there's a certain arbitrariness in the fact that, you know, somebody has to go first, but it's 60 days from today, essentially.

THE COURT: It's not 60 days from today. When was your client indicted?

MR. FRANZ: Well, it's 60 days from today that we're discussing this trial date of June 6. It's actually less than 60. When he was indicted, when first appeared, Judge Garaufis refused to set a trial date, declared it complex, and I on behalf of Mr. Sclafani didn't object. We knew it was going to be a monumental task to go to trial.

Typically, co-counsel, we suffer when other lawyers or other defendants, they file motions, and that's excluded from speedy trial. There's lots of ways that we're prejudiced by co-counsel and co-defendants. In this situation, some people want a speedy trial, and they want an immediate trial. They should be given it, not to the detriment of those people that can't be ready for trial.

And that's all we're asking. We're not asking to postpone this inevitably. We're asking for sufficient time to get ready for trial in a case that is filled with a lot of discovery materials.

And Your Honor suggested earlier that you don't want lawyers to come forward with any conflicts because you don't want there to be a cover-up. You don't want to read into a 2255. I don't want to see a 2255 someday by my client because I wasn't prepared, that he couldn't afford to hire a major law firm in Manhattan to put seven lawyers on the case.

THE COURT: Excuse me, if your client cant afford sufficient help, I'll give him a partial CJA to assist you, but you will have to come forward with some economic basis for that.

MR. FRANZ: I understand that, Your Honor, but the point remains that we in the current situation can't be ready for June to ask for September, I don't believe, is unreasonable under the circumstances.

THE COURT: All right. I understand your position. And nothing is written in stone. We may be able to do some things, but at the moment, I'm not doing it.

MR. FRANZ: I will sit down then at the moment, and we'll revisit the issue at the appropriate time, Your Honor.

THE COURT: So do we have five defendants now for trial on the date set, correct?

MR. LIPTON: Correct, Judge.

THE COURT: All right. So --

MR. LIPTON: Judge, I believe you said June 6th. I think in the order previous, it was June 9th, which is a Monday.

THE COURT: June 9th. You see, it's not even June 6th. It's June 9th.

MR. FRANZ: Unfortunately, that doesn't change it, but I wish it would. Are we better now?

THE COURT: All right. That takes care of the first group. Now we go to Group B, correct? And this group will be on a trailing calendar, unless the government can try two cases at once, in which case you'll have to set another date for the second group, Group B.

That's Brancato, Chirico, O'Donnell and Zagari, right?

MR. LIPTON: Correct, Judge.

THE COURT: Brancato?

MR. KING: Yes, Your Honor. Brian King from Tacopina and Siegel for Mr. Brancato.

THE COURT: Yes. He was moved from Group B to Group C to meet his problem.

MR. KING: We have no objection to the Group B as currently stated in the government's revised letter.

THE COURT: Group C, "C" as in "Charlie."

MR. KING: The last -- the last one.

THE COURT: You're going to be in B.

MR. KING: Group B. That's what I thought.

THE COURT: You moved from Group C to B?

MR. KING: Correct.

THE COURT: Okay. And you have no objection?

MR. KING: Just so I'm clear about it, Your Honor, I believe it was Group B with Mr. Brancato, Mr. Chirico, Mr. O'Donnell and Mr. Zagari.

THE COURT: That's my understanding, four.

MR. KING: That, we have no problem with.

THE COURT: Chirico?

MR. BENFANTE: Your Honor, Joseph Benfante for Mr. Joseph Chirico, Your Honor.

Judge, I do represent another client, Mr. Russell Ferrisi, who is in Group G.

THE COURT: Yes, I see that.

MR. BENFANTE: I have consulted with the Assistant U.S. Attorney, Mr. Lipton, and it appears that there should be no conflict. Their cases are totally unrelated, so I don't think there should be a problem, Judge.

THE COURT: Well, where is Mr. Chirico?

MR. BENFANTE: He's right there, Your Honor.

THE COURT: Come up and stand next to your attorney, please, sir.

Do you understand that your attorney is representing both you and Mr. Russell Ferrisi, who is going to be tried in another group?

DEFENDANT CHIRICO: Yes.

THE COURT: And you have discussed it with him?

DEFENDANT CHIRICO: Yes, with my lawyer, yes.

THE COURT: Now, that may make a difference in what kind of plea he can arrange, because he's representing two of you. You have a right to independent counsel. You understand that problem?

Another problem is in limiting his cross-examination.

DEFENDANT CHIRICO: I know.

THE COURT: You have discussed it thoroughly with him?

DEFENDANT CHIRICO: Yes.

THE COURT: You want time to discuss it with another attorney?

DEFENDANT CHIRICO: No.

THE COURT: You waive any possible conflict here?

DEFENDANT CHIRICO: Yes.

THE COURT: All right. Give me a letter to that effect.

MR. BENFANTE: Yes, Your Honor.

THE COURT: Does the government have any objection to proceeding?

MR. LIPTON: No. With that waiver, Your Honor, under Rule 44(c), we believe that is appropriate, given that Mr. Benfante's other client also makes a similar waiver that Your Honor accepts.

THE COURT: Now, what about this Joseph Scopo?

MR. BENFANTE: Yes, Your Honor.

THE COURT: He was in your office, wasn't he?

MR. BENFANTE: Yes. Originally, Your Honor, Mr. DiBenedetto, who is now an independent counsel, and he is representing Mr. Scopo.

MR. DIBENEDETTO: I'm present here, Judge, if you need to hear from me.

THE COURT: Well, as long as we think of people who are in the same office as identical -- when did you leave the office?

MR. DIBENEDETTO: At the outset of the case, Judge. I have not met Mr. Chirico or Mr. Ferrisi. The only notice that I filed is for Mr. Scopo.

THE COURT: Is there any conflict, in your opinion?

MR. DIBENEDETTO: No, Judge.

THE COURT: How about you?

MR. BENFANTE: No, Your Honor.

THE COURT: Where is -- is Scopo here?

MR. DIBENEDETTO: Yes, he is, Judge.

THE COURT: Where is Mr. Scopo? You understand that your attorney may have had something to do with another defendant, and that it may inhibit him in some way in the way he represents you?

DEFENDANT SCOPO: 5yes.

THE COURT: Yes or no?

DEFENDANT SCOPO: Yes.

THE COURT: And have you consulted this attorney about that?

DEFENDANT SCOPO: Yes.

THE COURT: Do you want him to continue to represent you?

DEFENDANT SCOPO: Yes.

THE COURT: You want time to consult with another attorney about the matter?

DEFENDANT SCOPO: No.

THE COURT: All right. Give me a letter, please.

MR. DIBENEDETTO: Yes, Judge.

THE COURT: I see no reason, unless the government can raise one about disqualification.

MR. LIPTON: No, Judge. I think with all the attorneys who are representing multiple defendants, as long as their client waives their right and Your Honor accepts that waiver, and they're knowingly and voluntarily given, I think that as to Mr. DiBenedetto's and Mr. Benfante's clients, that waiver is appropriate.

THE COURT: Okay. Thank you. You can sit down, unless want to say anything.

MR. BENFANTE: I just want to say something.

THE COURT: Yes. I would be glad to hear you.

MR. BENFANTE: The Group A group, if you're going to give us an indication of how long that case would be for the government's case because we're trailing -- the Group B would be trailing. I just wanted to --

THE COURT: How long do you think it will take?

MR. LIPTON: We estimate for the first group, Your Honor, anywhere from four to six weeks.

THE COURT: Four weeks. We'll take a break of a week or so, and then you would be on. I may, depending on what I can do, move it back a little, because I do appreciate what other counsel are facing, and I want everybody to have a fair trial. But, you could expect to go on towards the end of the summer, I would think.

MR. BENFANTE: Just so Your Honor knows, I join in co-counsel's -- Eric Franz's eloquent and very, very specific recommendations to the Court about giving us extra time just to listen to these tapes. Just that I tried, Judge. I put in many, many hours so far. They're body wires. They're unusually -- people are eating in restaurants and very, very hard, Judge, so --

THE COURT: I know. I know it's very difficult.

Are you transcribing any for the government?

MR. LIPTON: Yes, Judge. We're -- as we can, and we're trying to now as the trial groups change, focus on the ones that are most pressing and we're getting those out to defense counsel.

THE COURT: Whatever you transcribe, get right out. Now, what they're do is get them out in nonfinal form. So I don't want -- I don't want defense counsel showing discrepancies in the transcripts, because that's unfair.

MR. BENFANTE: We'll sign the usual stipulation, Your Honor. They're rough drafts.

THE COURT: They'll give them to you as soon as they can.

MR. BENFANTE: They're a great aid to us, Judge. Thank you.

THE COURT: We'll see what they're going to do, but you can assume you're going to be tried at a later date.

O'Donnell?

MR. MARTINELLI: Yes, Your Honor. Vincent Martinelli for Mr. Anthony O'Donnell. Good afternoon.

First and foremost, I do not object to the government's revised trial groupings, and we accept that.

Secondly, I do have a conflict in that I represent Mr. Steven Sabella from Group E. I have the same application as Mr. Benfante. As a matter of fact, for Mr. Sabella and his two co-conspirators, I think they're so isolated from almost everybody else in the entire indictment, not just Mr. O'Donnell, that there is virtually no overlap. There is zero overlap.

I have spoken to Mr. Sabella, who will be here at 1:15. He's prepared to waive, and I would call up Mr. O'Donnell, with your permission, and execute that waiver.

THE COURT: All right. Where is he? Okay.

MR. MARTINELLI: Your Honor, subject to your own independent questions, I have reviewed very specifically -- because it was addressed by Mr. Sabella at an earlier stage -- I reviewed very specifically the potential for a conflict, the fact that I have two different defendants in the same case.

They are in two completely opposite ends of the indictment, with no overlap. I believe Mr. O'Donnell has agreed to have me represent him, and does this voluntary, subject to Your Honor's questioning.

THE COURT: Do you understand the problem? We have discussed it with the other attorneys and the other defendants. If he is representing somebody else, he may not be able to do as well for you. You understand?

DEFENDANT O'DONNELL: Yes, I understand.

THE COURT: And you're willing to waive that?

DEFENDANT O'DONNELL: Yes.

THE COURT: Do you want to talk to another attorney before you make a final decision?

DEFENDANT O'DONNELL: No.

THE COURT: You have discussed it thoroughly?

DEFENDANT O'DONNELL: Yes.

THE COURT: And you want this attorney to represent you?

DEFENDANT O'DONNELL: Yes.

THE COURT: All right. Give me a written waiver, please, at your leisure.

MR. MARTINELLI: Yes, sir.

Your Honor, on the readiness issue --

THE COURT: Let me finish this, please.

Would you arrange, so we get a waiver from Sabella, as well?

MR. MARTINELLI: He's going to be here at 1:15.

THE COURT: And you're going to be here, too?

MR. MARTINELLI: Yes.

THE COURT: Take it up with him, so he understands the problem, will you?

MR. MARTINELLI: I will. I have already, Your Honor.

THE COURT: Okay.

MR. MARTINELLI: I've done it multiple times, very early.

THE COURT: Good.

MR. MARTINELLI: As the to readiness issue, I suspect, at least based on the 15 people here -- and I know some defense attorneys are here for the future appearances -- you're going to have redundant argument on this, but I don't know how I could even possibly be ready, assuming four weeks after June 9th or the week break. Mr. O'Donnell is on, at present, 33 tapes, 32 tapes. I think it's over 28 hours of conversation with him alone. I can hire a team of lawyers and not be ready.

Having that been said, considering Mr. Franz's argument and latching onto that as well, if Mr. Franz's trial starts in September, and I'm to go four to five to six weeks after that, I would have no argument in not being ready. I don't see how I could not be ready.

It's a critical difference, all the time period that we're going to spend on the case and reviewing the evidence would happen in this critical time period, and I think it would give me sufficient time. That's my application.

THE COURT: You're denied. The reasons I have said in connection with these other letters. We'll try to do everything we can to help counsel.

Zagari?

MR. RUBINSTEIN: Yes, Your Honor. Ron Rubinstein for the defendant, Zagari.

Subject to something unforeseen, I have no problem with the grouping, to be included in the Group B. Mr. Zagari has no problem with that.

The only other issue relates to the conflict issue, Your Honor. The government has in its letter indicated to the Court that I represented previously Anthony Ruggiano, who is a government witness, apparently on the RICO end of the case. We're non-RICO defendants here. He apparently is not going to be a witness in the trial of Group B. I've discussed that with Mr. Zagari. He's prepared to waive.

I also would like to advise the Court and the government that I had previously represented Joseph Corazzo, Senior in both the state case and in the federal case, and that I've discussed prior representation with Mr. Zagari, and he is prepared to waive any potential conflict, Your Honor.

THE COURT: Where's Mr. Zagari? Would you mind coming up, sir, please? Have you discussed this with your attorney?

DEFENDANT ZAGARI: Yes, I have.

THE COURT: And you understand that he may be inhibited in some way because he has representing you, and he's represented others?

DEFENDANT ZAGARI: Yes.

THE COURT: They have to be considered as possible witnesses.

DEFENDANT ZAGARI: Yes.

THE COURT: And you want to go forward with him?

DEFENDANT ZAGARI: Yes, I do.

THE COURT: Do you want time to take it up with another lawyer and get some independent advice?

DEFENDANT ZAGARI: No, sir.

THE COURT: All right. Give me a written waiver now, from this defendant.

MR. RUBINSTEIN: Yes, Your Honor.

THE COURT: Now, we also have the Charles Carniglia problem.

MR. RUBINSTEIN: Yes. Actually, I represented him for a very short time. My partner, Joseph Corazzo, Jr. actually tried the case of Charles Carniglia.

THE COURT: Well, where is Carniglia now?

MR. RUBINSTEIN: Carniglia is a defendant in another group.

THE COURT: Can you get a waiver from him?

MR. RUBINSTEIN: Yes, Your Honor.

THE COURT: All right. Well, let's get the waiver from him, as well.

MR. RUBINSTEIN: I'll remain here until his conference is had.

THE COURT: Now, you represented Ruggiano?

MR. RUBINSTEIN: Yes. That's what I said, Judge.

THE COURT: Who is going to cross-examine Ruggiano?

MR. RUBINSTEIN: I understand from the government's submission, he is not going to be a witness at the group B trial.

THE COURT: Is that true?

MR. LIPTON: Yes, Judge. It was our intention in writing the letter to try to limit the conflicts. So that if Group B remains the same, we do not believe that Mr. Ruggiano will be testifying against Mr. Zagari in that group. Of course, if the groups were to change, and that he were to testify in a group, even if it's not directly with regard to Mr. Zagari, then we would ask to have that same safeguard put into place, where Mr. Rubinstein would not be cross-examining Mr. Ruggiano.

THE COURT: It's unlikely that will happen, but will you agree to that?

MR. RUBINSTEIN: Absolutely, Your Honor.

THE COURT: And your client, will he agree to that?

DEFENDANT ZAGARI: Yes, I will.

THE COURT: All right. Put it in the letter, would you? Nothing else.

And Corazzo, Sr. is also in the picture, isn't he?

MR. RUBINSTEIN: That's what I said. He's going to be in the group that is your next group.

THE COURT: Well, are you going to get a waiver from him, too?

MR. RUBINSTEIN: Yes, Your Honor.

THE COURT: Okay. You're going to get the necessary waivers, right?

MR. RUBINSTEIN: Correct, Your Honor.

THE COURT: Try to get them in writing, so can close all of this out.

That covers Group B, correct?

MR. LIPTON: Yes, Judge.

THE COURT: Now, Group C is Cacciopoli, Cracolici, Epifania, Licata, Scopo and Scotto, correct? Six? Is that correct?

MR. LIPTON: Yes, Judge.

THE COURT: So this will be on the trailing calendar after Group B -- again, unless we can try a number of them together.

MR. DIBENEDETTO: Judge, Joseph DiBenedetto for

Mr. Scopo. Would the government state for the record approximately how long the trial would last for Group B?

MR. LIPTON: Judge, we would anticipate also four to six weeks for Group B.

THE COURT: Four weeks.

MR. DIBENEDETTO: Thank you.

THE COURT: Cacciopoli?

MR. TANON: Daniel Tanon for Tommy Cacciopoli.

At this time, we have no objection to Group C.

THE COURT: Okay. And you have no conflict problem, correct?

MR. TANON: I have no problem whatsoever, Your Honor.

THE COURT: Thank you.

Cracolici?

MR. AMOROSA: Dominic Amorosa for Mr. Cracolici, Judge.

THE COURT: Yes?

MR. AMOROSA: Judge, assuming that these other trials go first, I don't have a problem with respect to the scheduling of our case third. However, if they plead out, I do want to note that I certainly can't be ready in June. I have the same problems that a lot of these other lawyers have voiced, and we would voice it again.

THE COURT: I don't think you have a serious worry there. They're not all pleading out.

MR. AMOROSA: Who knows?

THE COURT: Well, if it happens, we'll all take a vacation in June.

MR. AMOROSA: Other than that, we're ready to go after these other cases.

THE COURT: Good.

Now, you have a conflict in the case? According to my notes at the outset, Joseph DiBenedetto, who currently represents Scotto --

MR. DIBENEDETTO: Yes, Judge?

THE COURT: -- was associated with Mr. Benfante in the law offices of Benfante and DiBenedetto, when it appears that Mr. DiBenedetto is no longer associated with Mr. Benfante.

So is there a conflict at the moment?

MR. DIBENEDETTO: No, Judge. The issue was previously addressed, and my client gave a waiver on the record.

THE COURT: Should we get a waiver from Cracolici?

MR. AMOROSA: No, Judge. I think there is some confusion. I have no conflict, nor does Cracolici. I think you're talking to counsel for another defendant. Judge, I believe it's Mr. Chirico.

MR. LIPTON: Judge, that was Mr. Chirico. The conflict didn't involve Mr. DiBenedetto.

THE COURT: There is no conflict with Cracolici?

MR. AMOROSA: No, sir.

THE COURT: All right. Then my notes are wrong, representing Cracolici.

Epifania?

MR. FROCCARO: Judge, James Froccaro for Mr. Epifania.

Judge, I have no problem with the proposed trial.

Judge, I do have a conflict issue. I represent another defendant in the case, Angelo Ruggiero, who was placed in Group H by the government. I have discussed the conflict issue with Mr. Epifania. He's willing to waive. He's here in court.

THE COURT: Would you come forward, please, Mr. Epifania?

MR. FROCCARO: Judge, I also have another minor conflict issue.

THE COURT: Let's take this up first, if you don't mind.

Do you understand? You have heard what's going on?

DEFENDANT EPIFANIA: Yes, Your Honor.

THE COURT: You understand your attorney represents somebody else, and that may interfere with his full representation of you?

DEFENDANT EPIFANIA: Yes.

THE COURT: And have you discussed it with him?

DEFENDANT EPIFANIA: Yes, I did.

THE COURT: And do you want time to discuss it with another lawyer?

DEFENDANT EPIFANIA: No.

THE COURT: And are you willing to waive in order to get this attorney?

DEFENDANT EPIFANIA: Yes, Your Honor.

THE COURT: And this is the one you wanted --

DEFENDANT EPIFANIA: Yes.

THE COURT: -- under the Constitution?

All right. Get me a written waiver. I see no problem. And we're getting a written waiver from the --

MR. FROCCARO: I will from Mr. Ruggiero. I will be here this afternoon, Judge.

Judge, there's one other small minor conflict. I represented a fellow by the name of John Regis, who is one of gambling defendants in the case. I just represented him --

THE COURT: Give me the spelling for the reporter.

MR. FROCCARO: R-E-G-I-S, Your Honor.

He's a gambling defendant. I represented him at his arraignment. We had no confidential communications whatsoever. That was my the extent of my representation.

THE COURT: Can you get a waiver from him?

MR. FROCCARO: Sure.

THE COURT: Put it in writing.

Any problem?

MR. LIPTON: No. We don't see any problem with that, Judge.

I just want to remind defense counsel, I believe some of the defense counsel -- maybe not the ones that have spoken already -- have represented other members that have been alleged to be either members or associates of the Gambino family. I just don't know all the different instances, so I just want to make sure that those representation issues are aired out, so we don't have any --

THE COURT: I have instructed counsel. They're all ethical, eminent members of the Bar, and I assume they'll take it up with me if --

MR. RUBINSTEIN: Your Honor, if the government will provide me with a list of all the people they claim are members, then I will be in a position to tell them that whether I represented this person or that person.

THE COURT: Well --

MR. RUBINSTEIN: It's not a question I have ever asked anybody.

THE COURT: Well, up to this point, you have dealt with the problem to my satisfaction. If something else comes up, we'll deal with it. I don't want to deal with hypotheticals. I've got enough actual problems.

So that covers Epifania. He is okay.

Licata?

MR. CARNESI: Yes, Your Honor. Charles Carnesi for

Anthony Licata.

Judge, we have no problem with the scheduling of the trial; however, consistent with the letter that was submitted yesterday by my co-counsel, Mr. Ginsberg, our request was that we would go as originally scheduled by the government in a group of three, Mr. Licata, Mr. Scotto and Mr. Cracolici.

THE COURT: Well, I can't accommodate you. I'm sorry.

MR. CARNESI: (Nods head affirmatively.)

THE COURT: There's no other problem there.

MR. CARNESI: No, Judge.

THE COURT: Can the government accommodate him?

MR. LIPTON: Judge, that would be a three-person --

THE COURT: Yes or no?

MR. LIPTON: No, Judge.

THE COURT: Thank you.

Mr. Scopo?

MR. DIBENEDETTO: Yes, Judge. Joseph DiBenedetto. We have no objection to our inclusion in Group C.

THE COURT: Your client is not here?

MR. DIBENEDETTO: He is, Judge.

THE COURT: Where is he?

MR. DIBENEDETTO: He is in the second row.

THE COURT: Yes. Okay. And we're going to get a letter from -- there is no other problem, is there?

MR. DIBENEDETTO: No, Judge.

THE COURT: So you're satisfied with the present allocation?

MR. DIBENEDETTO: I am, Judge.

THE COURT: Okay. I think that deals with all of those in A, B and C that I scheduled for 11:30.

Scotto, we have dealt with Scotto, haven't we -- Scopo. I'm sorry, Scotto. I beg your pardon.

MR. GINSBERG: Good afternoon, Your Honor. Seth Ginsberg.

Apart from the objections raised in the letter that I submitted regarding our request that we be tried as a group of three, Mr. Licata, Mr. Scotto and Mr. Cracolici, I have nothing additional to add, other than to note that while the government now says it cannot accommodate that request, it was their original proposal that these three be tried as a different group.

THE COURT: I understand. But when you shuffle the cards, some cards that are on top come out at the bottom.

MR. TANON: That case will try -- this case with the three of us will be tried in a week.

THE COURT: I understand. I understand.

MR. TANON: The government proposed it initially. We didn't propose it. We accepted it.

Then we come before Your Honor yesterday to submit another letter, and they said, we're going to take another three defendants and throw them in, even though they have nothing at all to do with our charges, except through the RICO charge.

THE COURT: I understand.

MR. TANON: It really is unfair, but I understand your problem, as well.

THE COURT: Well, life is unfair. I'll try to make it as unfair as possible.

MR. TANON: Thank you.

THE COURT: Anything further this morning?

MR. FRANZ: Your Honor, if I may, Eric Franz on behalf of Mr. Sclafani.

I seized upon Your Honor's comment earlier. I hope that we can revisit the trial date issue, if not today, a subsequent status conference next week.

THE COURT: We'll have to have another status conference, particularly with respect to A, or in order to go over all the in limine issues.

MR. FRANZ: Absolutely.

THE COURT: And if you can get together -- we don't want to schedule it too early, because you won't know enough about the problems if we schedule it too early, and we don't want to schedule it too late, because then I won't be able to solve them. So I would supposed mid-May would be a good time for Group A.

MR. FRANZ: As I indicated, I'll be on trial then. My immediate request is as follows: In an effort to get ready for trial as soon as possible, if the Court grants more time, that would be appreciated because my position remains the same. I won't be ready for June 9th, but I'd ask that the government provide us immediately with premarked exhibits, with a list of all of the tapes that they intend to introduce at the trial, with draft transcripts. I have already executed a draft transcript stipulation to them several weeks ago. I haven't received a shred of a transcript.

I would like all the 3500 material in the advance e so company object adequately prepared for trial and 404(b) evidence I would like to get that in due Hayes if we're going to be forced to go to trial within twos month months from today I would ask that the government be ordered to give us all of these materials with no exceptions within the next we two weeks in addition, I will speak with June about making request to the court for ti assignment of additional counsel to assist to review the discovery and review the tapes I'll find out what documentation the Court would need.

THE COURT: Well, you'll have to meet requirements under CJA with respect to ability to pay, I suppose.

MR. FRANZ: I will obviously address that.

THE COURT: Look into it, and if you find a resolution, I'll be happy to help you.

MR. FRANZ: Great. I'll point out that already under the circumstances, Mr. Sclafani has to hire another lawyer for the purpose of cross-examining Mr. DiLeonardo. He's of modest means. We'll fill out the financial forms, and we'll address the Court.

The point is, if we're going to go to trial, if whether it be June, July or August, the sooner the government provides us with the material, the sooner I can attempt to provide effective assistance to my client.

THE COURT: Well, maybe we ought to meet the end of the first week in May, and the government will give you the materials on a rolling basis, as it's available.

Try to get it to them as soon as possible.

MR. LIPTON: Judge, we're working under the same practical realities. Not only are we going to be preparing for trial, but we have other people that are coming thereafter. So we're trying to get everything together.

There's documents that we still are copying, getting out. We have gotten most of the tapes out, but we will do as best we can. We have those same issues.

THE COURT: May 8th, 10 a. m. for a pretrial hearing on Group A. And if you have any motions, you can make returnable then, that would be helpful.

MR. FRANZ: Your Honor, just to seize upon the last comment -- since the Court is suggesting the government provide materials on a rolling basis as they're available, the principal witness against my client would be this individual named Gallardo. I presume they have the 3500 material. That should be in their possession at this point in time. If they have it in their possession, could we ask that they provide it to us within the next week, so we could start reviewing it?

THE COURT: The government knows my view. They should give it to you as soon as they can.

Is there anything further this morning?

MR. FUTERFAS: Your Honor, what time is that on the 8th?

THE COURT: Ten o'clock.

MS. MACEDONIO: Your Honor, I'm in the unique position, having just filed a notice of appearance in this case of not even really understanding the depth of discovery --

THE COURT: I can't hear you. I'm sorry.

MS. MACEDONIO: I'm sorry. I'm in the unique position of having --

THE COURT: Don't you have a microphone there?

MS. MACEDONIO: No, Judge. Yes. Now, I do. Can you hear me now, Your Honor?

THE COURT: Now I hear you better.

MS. MACEDONIO: Okay. Thanks.

Having just filed a notice of appearance in the case, I'm in the unique position of not even fully understanding the depth of the discovery against my client but I do know that as late as Monday, the government filed three additional discovery letters in this case.

Since we are under a tight schedule, I would request that the Court at some date in the very near future conclude that discovery is complete, and if the government can't provide it, then they can't use it, Judge. Because we're now really in a game of catch up, and we can't be getting discovery on June first for a trial that is starting on June ninth.

THE COURT: I understand your position. You'll have to make that motion before me and I'll consider it, yes.

MS. MACEDONIO: Thank you, Judge.

THE COURT: I don't find at this moment an amenable motion.

MR. FUTERFAS: Your Honor, speaking for Group A or at least with respect to the Group A defendants, when one attorney speaks, can we assume, Your Honor, that the remaining counsel join in those statements and applications?

THE COURT: That will be the assumption of the Court, unless you want to disassociate yourself. It will be a motion on behalf of everyone.

MR. FUTERFAS: Very well. And Your Honor, I note in the letter I filed last night, we made the request as well in writing for the government to identify the tapes they will play at trial, its witnesses, promptly disclose all 3500 material, so the government now has in both writing and orally, our need for those materials.

MS. MACEDONIO: Your Honor, I have one further application that deals specifically with separation orders.

My client is being detained at the Queens facility, along with five other individuals. Because the institution itself is so small, there is a genuine problem with these incarcerated defendants being able to have access to the discovery material that's been provided there. I think that could be cured if the separation orders were lifted. I don't know.

THE COURT: I'm not going to interfere with the separation orders.

MS. MACEDONIO: Your Honor, I think that part of this matter or at least --

THE COURT: I'm not -- excuse me. I'm not going to interfere with the separation orders, based on the information before me. If you want to make a formal motion, I'll hear it. I'm not doing it on this oral motion.

MS. MACEDONIO: I will do so, Your Honor.

I believe that issues regarding the defendants' access to audio and videotapes is being heard with regard to the MDC at 3:30, and we'll come back to further address it then.

THE COURT: Thank you very much.

Anything further? All right. Thank you very much, and we'll have the next grouping at 1:15. Enjoy your lunch.

(11:30 conference concluded.)

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